

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
<b>vs.</b>	)	<b>CRIMINAL NO. 04-00051-CG</b>
	)	<b>CIVIL ACTION NO. 07-0746-CG</b>
<b>TRACY KAPRICE COTTON,</b>	)	
	)	
<b>Defendant/Petitioner.</b>	)	

**ORDER**

This matter is before the court on Tracy Kaprice Cotton's ("Cotton") 28 U.S.C. § 2255 motion, her memorandum in support, and the government's motion to dismiss. (Docs. 124, 129, and 130). For the reasons set forth below, the government's motion is **GRANTED**.

Cotton prepared a motion dated October 10, 2007, which was filed on October 16, 2007. (Doc. 124). The court granted her leave to file her memorandum of law in support of the motion by November 19, 2007. (Doc. 128). Her memorandum, which is dated November 19, 2007, was filed on November 28, 2007. (Doc. 129). The government argues that Cotton's motion is untimely. (Doc. 130).

In relevant part, § 2255 provides that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final[.]

28 U.S.C. § 2255.

Cotton's guilty plea to count three of her indictment was entered on July 6, 2004. (Doc. 66). She was sentenced on November 12, 2004, at which time counts one and two of the

indictment were dismissed on the government's motion. (11/12/04 Minute Entry). Judgment entered on November 22, 2004. (Doc. 90). Cotton filed a notice of appeal. (Doc. 92). The United States Court of Appeals for the Eleventh Circuit remanded Cotton's case for resentencing in light of the recent Supreme Court Decision, United States v. Booker, 543 U.S. 220 (2005). (Doc. 111).

This court resentenced Cotton on September 12, 2005, and judgment entered on September 27, 2005. (9/13/05 Minute Entry and Doc. 115). Cotton filed another notice of appeal. (Doc. 114). The Eleventh Circuit affirmed Cotton's sentence on June 26, 2006; its order was docketed in this court on July 25, 2006. (Doc. 122). Cotton did not petition for a writ of certiorari from the Eleventh Circuit's June 26, 2006, decision.

When, as in this case, no petition for a writ of certiorari is sought, judgment becomes final for § 2255 purposes when the time for filing such a writ expires. Clay v. United States, 537 U.S. 522, 532 (2003). The time for filing the writ expires within 90 days of when the appellate court's judgment is entered. See SUP. CT. R. 13. See also Close v. United States, 336 F.3d 1283, 1285 (11th Cir. 2003) (time for filing petition for writ of certiorari began to run from issuance of the opinion, not issuance of the mandate). The Eleventh Circuit entered judgment on June 26, 2006. Cotton's motion is dated October 10, 2007, and was docketed on October 16, 2007. Both the October 10, 2007, and October 16, 2007, dates occurred more than one year after the 90-day deadline for Cotton to file for a petition for writ of certiorari came and went. Consequently, the motion was filed more than one year after the judgment of conviction became final, making the motion untimely under § 2255.

The government's motion is **GRANTED**, and Cotton's motion is **DISMISSED** as

untimely.

**DONE and ORDERED** this 20<sup>th</sup> day of December, 2007.

/s/ Callie V. S. Granade

CHIEF UNITED STATES DISTRICT JUDGE